

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gary A. Snyder

Application No. 10/661,411

Filed: September 12, 2003

Confirmation No. 6660

For: GRAPE FLAVORED POME FRUIT

Examiner: Jyoti Chawla

Art Unit: 1794

Attorney Reference No. 6522-78332-01

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COMMISSIONER FOR PATENTS
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DECLARATION OF ROBERT A. MAST UNDER 37 C.F.R. §1.132

1. I, Robert A. Mast, head of Columbia Marketing International (CMI) marketing, have been in the business of marketing produce, such as apples, for over 12 years, as summarized in Exhibit A. I do not have property interest in the above-referenced patent application.

2. I am familiar with the apples (sold under the trademark GRAPPLE®) and the claimed process by which these apples are produced as referred to in the above-referenced '411 patent application (hereinafter the Subject Apples). I market numerous apple varieties, including the Subject Apples, as well as other new niche varieties.

3. I understand that the United States Patent and Trademark Office has questioned whether the success of the Subject Apples is because of the marketing of the Subject Apples rather than their uniqueness. I have reviewed the Declaration that was previously submitted to the USPTO by Mr. Snyder regarding the commercial success of the Subject Apples. Based upon my review of information provided in the previously submitted Declaration, Exhibit B submitted herewith, and my knowledge of marketing budgets for other niche apple varieties, it is my opinion that the success of the Subject Apples is based upon the uniqueness of the Subject Apples and not because of other factors including the marketing of the Subject Apples. The marketing budget

for the Subject Apples is significantly less than that spent on other niche varieties while the premium price commanded by the Subject Apples is significantly higher than that of other niche varieties that are supported by greater marketing dollars. In addition, consumers' personal accounts of their use of the Subject Apple suggest that their consumption is based on the uniqueness of the processed fruit.

4. As presented in Exhibit B, the marketing fee associated with a case of Cameo apples is 50 cents as compared to the Subject Apples of one dollar. The total marketing fees collected annually are \$318,250 for Cameo apples as compared to \$170,000 for the Subject Apples. Total marketing fees used annually are 100% of that collected for the Cameo apples as compared to 50% of those collected for the Subject Apples. So, although all of the marketing fees collected for the Cameo apples were used to market the Cameo apples (and such amount was significantly greater than that used for the Subject Apples), the average selling price per pound of the Subject Apples was greater than 4 times more than that of the Cameo apples. Similar findings were found with other apples, including Fuji apples. Regular Fuji apples are generally sold for approximately 46¢ per pound. However, the same Fuji apples after being processed by the claimed process of the '411 patent application are sold for 4 times that amount.

5. The ability to sell the Subject Apples at a significantly higher price while spending significantly less capital on marketing such apples as compared to other niche varieties, supports my opinion that the uniqueness and flavor of the Subject Apples has allowed the Subject Apples to continue to be sold at greater than 4 times the amount that non-processed apples are sold and that the success of the Subject Apples is not due to marketing efforts.

6. It is further my opinion that consumers that are repeat purchasers of the Subject Apples are returning to buy the fruit due to the uniqueness of the fruit. This opinion is supported by my experiences in the field of marketing the Subject Apples. For example, several customers have commented that there is nothing else on the market to compare to the Subject Apples and that their children are drawn to the apples due to their distinct flavor and taste. Moreover, many mothers have reported that they were able to get their children to eat apples for the first time due to the distinct Grape flavor of the product. Thus, it is my opinion that the uniqueness and the

flavor of the product is what keeps the demand strong and continues to generate new markets of opportunity for the product and not commercial marketing.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Robert A. Mast

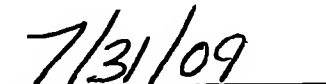

Date

EXHIBIT A

Robert A. Mast

SUMMARY OF QUALIFICATIONS

- Background encompasses more than 15 years management experience with expertise in:
 - Staff and Manager Training
 - Complaint/Conflict Resolution
 - Computer Literate – Microsoft Office
 - Contracts Administration/Negotiation
 - Personnel Supervision
 - Inventory Control
 - Labor Utilization
 - Budgeting/Cost Controls
- Excellent Communication and Interpersonal skills; employ a leadership-by-example philosophy inherent in effective team building.
- Thoroughly enjoy a challenge; analytical and able to reduce problems to a fundamental basis for effective solution.
- Superior organizational skills; able to efficiently complete multiple tasks within tight time margins in busy or stressful environments.
- Solid merchandising skills; displays and layouts, inventory control, stock management, receiving pilferage and shrink control.
- Proven skill in customer service, problem solving, building customer loyalty, satisfying needs, quality assurance, and promoting business image.
- Effective experience in purchasing and ordering; vendor relations and negotiations; pricing; seasonal planning.

PROFESSIONAL EXPERIENCE

Columbia Marketing International

2003 – Present

Vice President of Marketing (8/08 – Present)

Accountable for the Marketing of and Sales of over 12 million cartons and \$250 million of tree fruit annually throughout North America and around the globe. Directly responsible for the sales and profits of 6 packinghouses located throughout Washington State. Interact extensively with Sales department and Packinghouses to ensure that sales and profits are achieved or exceeded. Balance the Marketing budget and make decisions on where to best spend the marketing budget to maximize profitability and sales results. Coordinate long term planning with CMI executives to ensure that we are strategically aligned for future profitability and success. Oversee a staff of 5 individuals in the marketing department and motivate the team to perform at a consistently high level. Oversee the Food Safety Director and Food Safety program at CMI and its packinghouses.

- Profitably marketed the Largest Apple, Pear and Cherry crops in the history of the Northwest.
- Acquired 3 new Major accounts in the past year.

Director of Marketing (10/03 – 8/08)

Responsible for managing retail accounts located throughout North America and around the globe. Assist the Vice President of Marketing in achieving the department goals for sales and profitability. Coordinate retail promotions with our retail partners and the sales staff to achieve maximum results. Develop programs that assist the retail community in selling more of our goods to the consumer. Coordinate retail trade shows and ensure that CMI is well represented within the tree fruit industry.

- Won Produce Business Magazines Marketing Excellence award for 4 years straight.
- Won Progressive Grocer's Category Captain Award for excellence in Category Management.

Assistant Produce Director/Produce Category Manager (1/00 – 9/03)

Accountable for the procuring of quality produce for 152 produce department's in four states. Directly responsible for the sales and profits in 107 Fry's and Fry's marketplace stores. Interact extensively with Produce director as well as Wesco (Kroger buying arm for Produce) to ensure that sales and profits are achieved or exceeded. Manage Office staff and maintain a cohesive, team building environment in which company policies are enforced and followed. Develop merchandising plan for the produce department. Forecast sales and market trends. Attend directors meetings.

- Successfully converted 17 Fred Meyer stores to Fry's Marketplace stores
- Obtained record setting goals in Gross Profit and sales for the 2nd Quarter of 2002
- Achieved a warehouse service level of over 98% for the past 2 years

Produce Supervisor (1997 – 1/00)

Directly accountable for 25 produce, floral and nutritional departments in two districts with sales of \$60 million annually. Interact extensively with district managers and directors as well as store managers and buyers to ensure continued growth and profitability. Develop and present specialized management training programs (i.e. implementation and maintenance of merchandising strategies, effective staff management techniques, etc.) Support managers with continuous assistance in areas of labor, discipline and sanitation. Provide ongoing training to store personnel in all departmental operational aspects. Evaluate staff and department performance to ensure compliance with established goals and objectives; implement and/or revise programs and strategies as necessary.

- Increased gross profit by 3% and sales by 6%
- Won company contest for highest increase in sales, profits, distribution and CTO.

EDUCATION AND TRAINING

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|---|------|
| <u>United Fresh Research & Education</u> | 2008 |
| Training for a Recall, Communicating under Fire | |

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|------------------------------------|------|
| <u>Washington State University</u> | 2008 |
| Basic HACCP workshop | |

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| <u>MAP Management System</u> | 2007 |
| Management Action programs | |

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|---------------------|------|
| <u>AC Nielsen</u> | 2003 |
| Category Management | |

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| <u>Crestcom Management Training</u> | 2002 |
| Bullet Proof Manager | |

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| <u>Karrass Negotiating Training</u> | 2001 |
| Effective Negotiating Course | |

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|------------------------------------|------|
| <u>Microsoft Excel Training</u> | 2001 |
| Microsoft Excel for the Power User | |

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|---------------------------------------|------|
| <u>Kroger Category Management 102</u> | 2000 |
| Effective Category Management skills | |

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| <u>Team Building Management Training</u> | 1997 |
| Inventory Control Workshop | |

| | |
|---|-----------|
| <u>Arizona State University, Tempe, Arizona</u> | 1990-1995 |
| B.S., Management & Communication | May 1995 |

EXHIBIT B

Comparison of Marketing efforts:

| | <u>Cameo Apples</u> | <u>Gräpple® brand apples</u> |
|---|----------------------------|-------------------------------------|
| Cartons sold annually | 636,500 | 170,000 |
| Marketing fee per case | 50¢ a case | \$1.00 a case |
| Total Marketing Fees collected annually | \$318,250 | \$170,000 |
| Total Marketing Fees used annually | \$318,250 | \$85,000 |
| Average FOB | \$16.55 | \$26.90 |
| lbs of Fruit | 40 lbs | 15 lbs |
| Avg. Selling price per pound | 41¢ lb | \$1.79 lb |